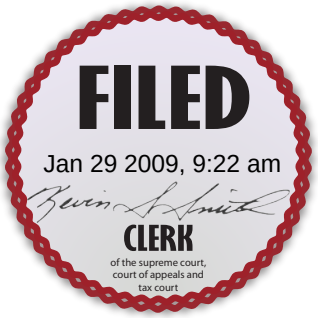


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| BRIAN WILLIAMS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 36A01-0708-CR-357 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0603-FD-83

**January 29, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Brian Williams appeals from his conviction for Operating a Vehicle While Intoxicated, as a Class D felony, following a jury trial. Williams raises a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

## FACTS AND PROCEDURAL HISTORY

In the early morning hours of March 6, 2006, Seymour Police Officer Bart Bevers initiated a traffic stop of Williams' vehicle for failing to signal 200 feet in advance of a turn and for driving on the lane-divider line. Upon approaching Williams, Officer Bevers smelled alcohol coming through Williams' partially opened driver's window. Officer Bevers ordered Williams to exit the vehicle. According to Officer Bevers,

> once he got out of the vehicle . . . I could still smell the odor of alcoholic beverages coming [from] him as I was speaking with him. I noticed that his eyes were bloodshot[.] . . . [O]ne thing I noticed that was unusual [was] that whenever he would, whenever I was conversing with him he turned his entire body to the side and would be . . . looking off to my right.
>
> * * *
>
> [O]n the sidewalk I asked him if he had been drinking anything at all and he claimed that he had not consumed any alcohol. It was pretty apparent to me that he obviously had . . . .

Transcript at 20, 22-23.

At that time, Officer Gilbert Carpenter arrived to assist Officer Bevers. Officer Carpenter noticed that Williams was

> kind of disorderly, disheveled clothing [sic], kind of messy, his shirt was kind of untucked, kind of looked like it probably [had] been worn for a day

> or so. [I] also . . . noticed the odor of alcohol emitting from his mouth. He had slurred speed. His eyes were bloodshot and watery. He . . . swayed from side to side while he was talking to us. Every time you would ask him anything or Officer Bevers would ask, he would always turn his head away as [if] trying not to emit that odor from his breath. He was trying to cover that up.

Id. at 59-60.

The officers then informed Williams that they were going to administer some field sobriety tests, but he refused. The officers confirmed with Williams that he would not take the field sobriety tests and informed him of Indiana's Implied Consent Law, and, when he continued to refuse, the officers arrested Williams. About thirty minutes after booking Williams into the Jackson County jail, Officer Bevers could still smell "a very strong odor inside the [patrol] car of a[n] alcoholic beverage." Id. at 30.

Later that day, the State charged Williams with operating a vehicle while intoxicated, as a Class D felony. On May 31, 2007, the court held Williams' jury trial, and the jury found him guilty as charged. The court entered a judgment of conviction against Williams and ordered him to serve one and one-half years incarceration. This appeal ensued.

## DISCUSSION AND DECISION

Williams argues that the State failed to present sufficient evidence that he was intoxicated. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable

doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove that Williams operated a vehicle while intoxicated, as a Class D felony, the State was required to demonstrate beyond a reasonable doubt that Williams operated a vehicle while intoxicated with a prior conviction for operating while intoxicated within five years. Ind. Code §§ 9-30-5-2(a), 9-30-5-3(a)(1) (2004). On appeal, Williams only challenges whether the State presented sufficient evidence of his intoxication. Indiana Code Section 9-13-2-86 defines "intoxicated" as "under the influence of: (1) alcohol; . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties."

> [P]roof of intoxication may be established by showing impairment, and . . . it does not require proof of a Blood Alcohol Content ("BAC") level. See Jellison v. State, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995). Evidence of the following can establish impairment: (1) the consumption of significant amounts of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; (7) slurred speech. See id. at 535-36 (Ind. Ct. App. 1998); see also Staley v. State, 633 N.E.2d 314, 317-18 (Ind. Ct. App. 1994).

Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

Here, Williams acknowledges that "two (2) of the . . . six factors, namely, number (3) watery or bloodshot eyes, and number (4) odor of alcohol on breath," were established by the testimony of Officer Bevers and Officer Carpenter. See Appellant's Brief at 11. But Officer Carpenter also testified that Williams swayed while talking, had slurred speech, and was disheveled. Both officers testified that Williams was rude to them and that Williams turned his head when speaking, as if to hide the alcoholic smell

on his breath. And Officer Bevers testified that, a half-hour after having removed Williams from the patrol car, the car still reeked of alcohol.

The State presented sufficient evidence to demonstrate Williams' intoxication. Williams' arguments on appeal simply amount to requests for this court to reweigh the evidence, which we will not do. See Jones, 783 N.E.2d at 1139. As such, we must affirm his conviction.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.